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4 UNITED STATES BANKRUPTCY COURT
5 NORTHERN DISTRICT OF CALIFORNIA

6 In re

7 ROBERT and DEBORAH BROOKS,

No. 97-11728

8 Debtor(s).
9 _____/

10 Memorandum re Sovereign Immunity
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11 Debtors Robert and Deborah Brooks seek civil contempt sanctions against Gerald Goldberg,
12 Executive Officer of the California Franchise Tax Board, for his attempt to collect state income taxes
13 allegedly discharged in their 1997 Chapter 13 case. Goldberg argues that the taxes in question were not
14 discharged under applicable federal bankruptcy law. However, he goes further and argues, based on
15 principles of sovereign immunity, that the federal government has no power to discharge state taxes.

16 In *Goldberg v. Ellett*, 254 F.3d 1135 (9th Cir. 2001), the Court of Appeals held that the *Ex Parte*
17 *Young* doctrine permitted enforcement of the bankruptcy discharge against a state's officials
18 notwithstanding sovereign immunity. Goldberg argues that *Goldberg v. Ellett* was effectively overruled
19 by *Federal Maritime Commission v. South Carolina Ports Authority*, 535 U.S. 743 (2002), even
20 thought that case did not deal directly with the *Ex Parte Young* doctrine. The court disagrees. As one
21 commentator has noted:

22 The *Ex parte Young* doctrine permits federal courts to compel state officials' compliance
23 with federal law through prospective declaratory and injunctive remedies,
24 notwithstanding the sovereign immunity of the state. The foundations of the *Ex parte*
25 *Young* doctrine are as old as our Anglo conception of sovereign immunity itself, and
26 both *Seminole Tribe* and *Alden* reaffirmed the continuing vitality of *Ex parte Young*
relief. Just as bankruptcy's collective debt restructuring process has always been
dependent upon all creditors' participation at the compulsion of a federal bankruptcy
court, the English antecedents of *Ex parte Young* also lie in the notion that the courts must
have at their disposal means by which to enforce the law against the Crown's officers.
The underlying precept, that the sovereign is subject to the law, also animates the
American federalism version of dual sovereignty in which federal law is supreme over

1 state law and is reflected prominently in the modern *Ex parte Young* doctrine. On
2 principle, then, *Ex parte Young* should (and indeed does) find natural application to
3 much of what occurs in bankruptcy relative to the states as creditors.

4 Brubaker, "Of State Sovereign Immunity and Prospective Remedies: The Bankruptcy Discharge as
5 Statutory Ex Parte Young Relief, " 76 Am.Bankr.L.J. 461, 466 (2002).

6 The law aside, the court questions the wisdom of California's knee-jerk assertion of sovereign
7 immunity in cases such as this, as the state benefits enormously from federal bankruptcy laws.
8 Bankruptcy trustees distribute millions of dollars to the state treasury each year, and the state economy
9 benefits from the fresh start afforded to debtors far more than it may lose in discharged taxes. The court
10 has little doubt that if Congress repealed the Bankruptcy Code tomorrow California would re-enact it as
11 state law in short order, and would include the provisions discharging old unsecured tax debt just as
12 Congress in its wisdom allows discharge of such federal taxes under the Bankruptcy Code.

13 The court will decide the issue of whether the subject taxes have in fact been discharges
14 separately. However, it rejects Goldberg's assertion that the provisions of the Bankruptcy Code
15 discharging old unsecured taxes are unenforceable against the state.

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17 Dated: April 3, 2003

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19 Alan Jaroslovsky
20 U.S. Bankruptcy Judge
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